

IN THE DISTRICT COURT OF KEYA PAHA COUNTY, NEBRASKA

ORA MEYERS and ORVILLE MEYERS,

Plaintiffs,

vs.

**GARY STORTENBECK, whose true
name is GARY STORTENBECKER,**

Defendant.

Case No. CI00-4

JUDGMENT

DATE OF TRIAL: November 20, 2002.

DATE OF RENDITION: November 20, 2002.

DATE OF ENTRY: See court clerk's file stamp date per § 25-1301(3).

APPEARANCES:

For plaintiffs: Forrest F. Peetz with plaintiffs.

For defendant: Eric A. Scott with defendant.

SUBJECT OF JUDGMENT: Decision on the merits following trial to the court without a jury.

PROCEEDINGS: At the trial, these proceedings occurred:

Pursuant to the pretrial order, the plaintiffs' previously approved amendment to the petition by interlineation was accomplished in open court. The plaintiffs raised no other preliminary matters. The defendant verbally submitted an offer to confess judgment pursuant to § 25-906 of \$11,575.00. After a brief recess, the plaintiffs refused the offer. The defendant raised no other preliminary matter.

Counsel for plaintiffs and counsel for defendant waived opening statements. The plaintiffs presented evidence. Orville Meyers and Ora Meyers testified upon oath. Orville Meyers, previously sworn, testified further. The plaintiffs verbally moved for leave to amend their petition by interlineation to conform to the proof, and specifically to amend

paragraph 3D to separately state and number the same as a separate cause of action. Counsel for plaintiffs and counsel for defendants presented arguments. The court granted the motion and counsel for plaintiffs accomplished the same forthwith. Counsel for plaintiffs read excerpts of the deposition testimony of the defendant, and pursuant to Rule 106, counsel for defendant read additional excerpts of the deposition testimony of defendant. The plaintiffs rested. The defendant verbally moved to dismiss both causes of action of the plaintiffs' petition for insufficient evidence. Counsel for defendant and counsel for plaintiffs presented argument. The court denied the motion. After a brief recess, and after consulting both counsel in chambers, the court recessed for lunch.

Following the lunch recess, with both counsel and the defendant present but in the absence of the plaintiffs, the trial resumed with consent of plaintiffs' counsel. Gary Stortenbecker testified upon oath. Shortly after the testimony began, the plaintiffs returned. After a brief recess at the close of cross examination, counsel concluded the examination. Katie Stortenbecker testified upon oath. The defendant rested. The plaintiff presented rebuttal evidence. Ora Meyers and Orville Meyers, previously sworn, testified further in rebuttal. The plaintiffs rested on rebuttal. The plaintiffs submitted their written itemization of costs, a motion to tax attorney fees and costs, and a supporting affidavit, which documents were immediately filed by the clerk. Counsel for plaintiffs and counsel for defendant presented closing arguments. The court considered the plaintiffs' motion to tax attorney fees and costs and the affidavit submitted therewith. Counsel for plaintiffs and counsel for defendant presented arguments on the motion. The court dictated trial docket notes for transcription by the clerk, made general findings, and pronounced decision.

FINDINGS: General findings were stated on the record.

JUDGMENT: IT IS THEREFORE ADJUDGED that:

1. Judgment is granted in favor of the plaintiffs and against the defendant in the sum of \$16,000.00, with prejudgment interest thereon from November 1, 2000, to date of judgment at the rate of 12% per annum in the amount of \$3,945.21, on the first cause of

action of the plaintiffs' operative petition, and in the sum of \$1,020.00, with prejudgment interest thereon from November 1, 2000, to date of judgment at the rate of 6% per annum in the amount of \$125.75, on the second cause of action of the said petition, and costs of suit taxed in the amount of \$457.02. The judgment shall bear interest from date of entry of judgment at the rate of 3.507% per annum.

2. Judgment is granted in favor of the plaintiffs and against the defendant on all causes of action of the defendant's operative counterclaim, and all causes of action of the defendant's operative counterclaim are dismissed with prejudice at defendant's cost.

3. All requests for attorneys' fees, including but not limited to the plaintiffs' motion to tax attorney fees and costs pursuant to § 25-824(2), are denied.

Signed at **Springview**, Nebraska, on **November 20, 2002**;
DEEMED ENTERED upon file stamp date by court clerk.

BY THE COURT:

If checked, the court clerk shall:

- ☒ Mail a copy of this order to all counsel of record and any pro se parties.
Done on _____, 20____ by _____.
- ☒ If not already done, immediately transcribe trial docket entry dictated in open court.
Done on _____, 20____ by _____.
- ☒ Note the decision on the trial docket as: [date of filing] **Signed "Judgment" entered.**
Done on _____, 20____ by _____.
- ☒ Mail postcard/notice required by § 25-1301.01 within 3 days.
Done on _____, 20____ by _____.
- ☒ Enter judgment on the judgment record.
Done on _____, 20____ by _____.

William B. Cassel
District Judge

Mailed to: